

REMARKS

Claims 1-15, 17-26, 28-34, 36-52, and 54-55 are all the claims pending in the application, stand rejected on prior art grounds. Applicants respectfully traverse these rejections based on the following discussion.

I. The Prior Art Rejections

Claims 1-6, 9-13, 15-17, 19-24, 28-32, 34, 36, 38-43, 46-50, 52, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock (U.S. Patent No. 6,490,565). Claims 7, 18, 25, 37, 44, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Petke, et al. (U.S. Patent No. 6,163,732), hereinafter referred to as Petke. Claims 8, 26, and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Barrett, et al. (U.S. Patent No. 6,029,144), hereinafter referred to as Barrett. Claims 14, 33, and 51 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Smalley, et al. (U.S. Patent No. 6,067,549), hereinafter referred to as Smalley. Applicants respectfully traverse these rejections based on the following discussion.

The claimed invention provides a method for monitoring environmental performance information and providing notification when the performance information indicates performance reaching a predetermined level. In the rejection, the Office Action argues that Beldock discloses many features of the claimed invention. However, Beldock *teaches away* from the claimed features of modifying performance immediately subsequent to the notification so that the modifying occurs in real time. Instead, Beldock

discloses that participants are given a short period of time in which to correct any inadvertent defects in its compliance. Furthermore, Beldock teaches setting uniform performance criteria; and as such, Beldock teaches against setting the performance criteria to different levels (e.g., global, regional, or site-specific). Therefore, as explained in greater detail below, Applicants respectfully submit that the prior art of record does not teach or suggest the claimed invention.

On pages 5-6, item 4, of the rejection, the Office Action asserts that “Applicant’s arguments are directed towards limitations taught by Official Notice”; “Applicant has not provided adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying Official Notice”; “Bald statements such as, ‘the Examiner has not provided proof that this element is well known’ or ‘applicant disagrees with the Examiner’s taking of Official Notice and hereby requests evidence in support thereof’, are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice”.

Applicants traverse the rejections and submit that the prior art of record teaches against the claimed invention. More specifically, Applicants traverse the taking of Official Notice that the modifying of the performance is conducted immediately subsequent to the providing of the notification so that the modifying of the performance occurs in real time. Such features are defined in independent claims 1, 19, and 38 using similar language.

As described in paragraph 0010 of Applicants’ disclosure, the performance indicator and notification system (PINS) provides a mechanism for assessing

environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria. As further described in paragraph 0042 of Applicants' disclosure, PINS provides real-time analysis of performance data, as opposed to a retrospective view on performance passed the elapsed measurement period so that comprehensive company-wide monitoring of performance is accomplished in a manner such that data entered in a single site is accessible, in real-time, at other sites to perform thresholding on limits set at multiple sites, all sites, or just the local site. PINS makes the entire process of performance tracking against criteria systematic, timely and efficient; and turns lagging indicators into leading indicators by way of providing real-time performance feedback.

Applicants submit that Beldock teaches against the claimed feature wherein the modifying of the performance is conducted *immediately subsequent* to the providing of the notification so that the modifying of the performance occurs in *real time*. More specifically, as acknowledged by the Office Action, Beldock teaches that participants are given "a short period of time" in which to correct any inadvertent defects in its compliance (Office Action, p. 10, para. 2).

Applicants respectfully submit that giving participants a *short period of time* to correct defects teaches away from modifying performance *immediately subsequent* to notification of such defects so that the modifying occurs in *real time*. In other words, if action B is performed a short time after action A, then action B is not performed *immediately subsequent* to action A such that action B occurs in *real time*.

Accordingly, Applicants submit that Beldock teaches away from modifying performance immediately subsequent to the notification so that the modifying occurs in real time. Instead, Beldock discloses that participants are given a short period of time in which to correct any inadvertent defects in its compliance. Therefore, it is Applicants' position that Beldock teaches away from the claimed feature "wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time" as defined by independent claims 1, 19, and 38.

In addition, Applicants traverse the taking of Official Notice that setting the performance criteria to a global, a regional, or a site-specific level is well-known within the art. Such a feature is defined in independent claims 1, 19, and 38 using similar language.

More specifically, Applicants traverse the rejections because Beldock teaches against setting performance criteria to a global, a regional, or a site-specific level. As described in the abstract and column 6, lines 10-19 of Beldock, the data processing method for an environmental certification program provides *uniform criteria* for participants in the program. As such, the certification mark provided by the program to a complying participant has discernable value in the marketplace. In addition, the continued display of the certification mark by a participant on its goods and in its advertising signifies the participant's dedication to environmental concerns and the willingness of the participant to act to be a model environmental citizen.

Conversely, as discussed in paragraph 0035 of Applicants' disclosure, performance data criteria may be set at a global, regional or site level. This flexible system for setting performance levels allows for site-specific criteria to be set for a facility while corporate-wide criteria to be set for goals affecting all or some locations.

Accordingly, Applicants submit that Beldock teaches setting *uniform* performance criteria; and as such, Beldock teaches against setting the performance criteria to *different* levels (e.g., global, regional, or site-specific). If the performance criteria of Beldock are *uniformly* set, then the performance criteria cannot be set to *different* levels (e.g., global, regional, or site-specific). Therefore, it is Applicants' position that Beldock teaches away from the claimed feature "wherein said performance criteria is set at one of a global, a regional, and a site-specific level" as defined by independent claims 1, 19, and 38.

Therefore, it is Applicants' position that the prior art of record does not teach or suggest many features defined by independent claims 1, 19, 38 and that such claims are patentable over the prior art of record. Further, it is Applicants' position that dependent claims 2-15, 17-18, 20-26, 28-34, 36-37, 39-52, and 54-55 are similarly patentable, not only because of their dependency from a patentable independent claims, but also because of the additional features of the invention they defined. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections.

II. Formal Matters and Conclusion

In view of the foregoing, Applicants submit that claims 1-15, 17-26, 28-34, 36-52, and 54-55, all the claims presently pending in the application, are patentably distinct from

the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary. Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 50-0510.

Respectfully submitted,

Dated: May 15, 2007

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